

Union of Concerned Scientists
1825 K St., NW • Suite 800
Washington, DC 20006-1232
p: 202-223-6133 f: 202-223-6162

DELIVERED BY FOIA ONLINE

May 11, 2018

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

Re: Freedom of Information Act Request

To Whom It May Concern:

I write on behalf of the Union of Concerned Scientists (“UCS”) to request that the United States Environmental Protection Agency (“EPA”) provide copies of the records¹ described below pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the EPA regulations at 40 C.F.R. § 2.100, *et seq.*

Request for Records

Throughout this request, any request for emails should be construed to include all emails to or from *any* email address that a given staff-member or political appointee has on government servers, as well as any emails to or from *other* email accounts that person controls if they discuss any government activities or programs that are the subject of this request.

On March 13, 2017, EPA Administrator Scott Pruitt announced the reconsideration of EPA’s recently-promulgated Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, 82 Fed. Reg. 4594 (Jan. 13, 2017) (amending 40 C.F.R. Pt. 68) (also referred to as the “Chemical Disaster Rule,” “RMP Amendments” or “Accident Prevention Amendments”). *See* Letter of Adm’r Pruitt Granting Reconsideration, [EPA-HQ-OEM-2015-0725-0763](#). In his letter, Mr. Pruitt stated his intention that EPA would soon prepare a notice of proposed rulemaking to provide the public an opportunity to comment on the issues raised in the

¹ For the purposes of this request, the terms “record” and “records” mean all materials in whatever form (handwritten, typed, electronic or otherwise) in EPA’s possession, including, but not limited to: letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, notes of telephone conversations, telefaxes, e-mails, text messages, internet chat logs, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of the EPA or any of its offices nationwide, including responsive records in or on the personal computers, cellphones, or other devices, or personal email accounts used by any federal employee or official if used for any governmental purpose.

petition for reconsideration as well as any other matter EPA believes will benefit from additional comment. On June 14, 2017, EPA promulgated a rule postponing the effective date of the Chemical Disaster Rule until February 19, 2019. 82 Fed. Reg. 27,133 (June 14, 2017) (the “Delay Rule”).

UCS requests that EPA provide the records described below. UCS requires only records created or received by the agency after November 7, 2016. Additionally, any records already publicly available on [regulations.gov](https://www.regulations.gov) in docket EPA-HQ-OEM-2015-0725 should be omitted from this request.

1. Any records containing communications between (A) any staff of EPA’s Office of Land and Emergency Management (“OLEM”) or its subsidiary divisions; and (B) anyone outside of the agency, relating to either: (1) the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act rule (RMP Amendments or Jan. 2017 Chemical Disaster Rule) (including but not limited to records discussing its development, reconsideration, potential or actual revisions, delay, or potential repeal); (2) 40 C.F.R. Part 68; or (3) the Delay Rule.
2. Any and all records that EPA (except for the Office of the Administrator) has and/or has reviewed involving requests for or a potential or actual decision to revise, delay, suspend, and/or to initiate reconsideration of the Chemical Disaster Rule.
3. Any and all records that EPA (except for the Office of the Administrator) has and/or has reviewed regarding EPA’s reconsideration process or the development of the notice of proposed rulemaking described in Mr. Pruitt’s letter.
4. Any and all records that EPA (except for the Office of the Administrator) has or has reviewed regarding the updated EPA document entitled, Frequent Questions on the Final Amendments to the Risk Management Program (RMP) Rule, posted to EPA’s website on Aug. 2, 2017, https://www.epa.gov/sites/production/files/2017-08/documents/rmp_final_rule_qs_and_as_8-02-17.pdf, or any other updates to the following website: <https://www.epa.gov/rmp/final-amendments-risk-management-program-rmp-rule>.
5. Any records relating to EPA’s decision to classify the agency’s planned action regarding the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act rule as “deregulatory action” under Executive Order 13771, as denoted on the following website: <https://www.epa.gov/laws-regulations/epa-deregulatory-actions>.

Additional Instructions

UCS requests that all fees incurred in connection with the attached request to your agency be waived, because “disclosure of the information is in the public interest” and “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). See below for further justification for our fee waiver request.

If any of the material covered by this request has been destroyed or removed, please provide all surrounding documentation including, but not limited to, a description of the action taken

regarding the materials and justification for those actions taken.

For any documents or portions you deny due to a specific FOIA exemption, please provide a *Vaughn* Index (*Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974)), including a detailed justification of your grounds for claiming such exemption and explanation of why the exemption is relevant to the document or portion of the document withheld.

The Union of Concerned Scientists consents to the deletion of any material that would violate an individual's rights under the Privacy Act.

We will work with your office to further refine the request if you find any terms too imprecise, conduct searches for unclassified responsive records, or engage in any other reasonable activities that would lessen the agency's burden and costs.

We would prefer to receive the responsive documents in batches as they are collected. Electronic delivery is preferred but hard copies are also acceptable.

Request and Justification for Waiver of Fees

UCS requests that all fees incurred in connection with the above request to your agency be waived, because "disclosure of the information is in the public interest" and "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the requested records will contribute significantly to public understanding of the operations or activities of the government.

UCS addresses the six requirements of the EPA regulations regarding public interest fee waivers below:

Factor 1: The subject of the request.

The subject of the request concerns the operations and activities of the federal government. The public has a right to know what information the Administrator and EPA have relied on in deciding to reconsider or delay the Chemical Disaster Rule. The public also has a right to know what information is being reviewed by the agency as part of that reconsideration, and what communications are being had with outside parties related to these rules.

Factor 2: The informative value of the information to be disclosed.

The request exempts documents already made publicly available on [regulations.gov](https://www.epa.gov/regulations). Because the requested information has so far been withheld from the public, release of the requested information will contribute significantly to the understanding of a broad public audience of persons interested in this subject. To the best of UCS's knowledge, the information sought is not duplicative or available otherwise in the public domain. The records that are requested will provide greater insight into the EPA's rulemaking activities related to chemical disaster prevention. Data in EPA's docket for the Chemical Disaster Rule shows 177 million people live in areas vulnerable to such disasters. EPA data shows 2,291 accidents occurred at the over

12,500 facilities covered by EPA's Risk Management Program between 2004 and 2013. Over 1,500 of these accidents harmed someone or caused property damage. Collectively, 59 people were killed and over 17,000 people were injured or needed to seek medical treatment. Approximately half a million people needed to shelter in place or evacuate due to a chemical accident during this period. These incidents continue to occur like clockwork while the Chemical Disaster Rule is being delayed by EPA, and so information related to this delay or to potential revisions of the Chemical Disaster Rule are of great public importance. Preventing chemical accidents is a serious public concern, and the records requested are vital to the public's understanding of it and how EPA is addressing this problem.

Factor 3: The contribution to an understanding of the subject by the public is likely to result from disclosure.

As discussed below, UCS qualifies as a representative of the news media. Therefore, under 40 C.F.R. § 2.107(l)(2)(iii), it should "be presumed that [UCS] will satisfy" the requirement that disclosure of the requested information must contribute to public understanding.

In addition, the records requested by UCS will contribute to the public's understanding of the critical chemical safety problem described above and of what EPA may or may not be doing to address that problem. UCS can and will ensure that the requested records reach a broad audience and contribute to public understanding of the EPA's current actions related to the Chemical Disaster Rule. After reviewing and evaluating the records, we will work with reporters at major news organizations to bring the content of material documents to the public's attention. In addition, we will make relevant documents publicly available on our website.

Founded in 1969, UCS is a science-based public interest organization with more than 500,000 supporters – including parents, businesspeople, scientists, teachers, and students – throughout the United States. To help further our work of using sound scientific analysis – not political calculations or corporate hype – to create a healthy, safe, and sustainable future, as well as promote scientific integrity in government science, we seek to provide our members and activists, as well as the general public, up-to-date information, news, and commentary on various aspects of science policy.

UCS consistently publishes in-depth reports on topics of critical interest.² It also publishes newsletters, fact sheets, blogs and other publications in print and electronic form. Moreover, UCS serves as a resource for the media and testifies before Congress.

UCS maintains a public website, www.ucsusa.org, with science-policy related information and news. Our website is visited an average of 15,000 times each day. In March of 2015, we had over one million unique visitors to our website. Visitors to the website include scientists, teachers, businesspeople, federal and state officials, and other concerned citizens. Moreover, information posted on UCS's website is often linked to websites of other organizations. UCS also has a blog, available at blog.ucsusa.org, and is active on Facebook and Twitter.

UCS has a long history of successfully working with the news media to educate the public, and

² Visit www.ucsusa.org for numerous examples of reports published on a variety of different topics.

assist our member scientists and the concerned public about government activities. UCS staff possess detailed knowledge of political interference in science at the EPA.³ Our work in this area has been the subject of major congressional hearings⁴ and news coverage⁵.

Factor 4: The significance of the contribution to public understanding.

As discussed above, disclosure of the requested records will contribute significantly to the public's understanding of EPA's recent actions delaying the Chemical Disaster Rule and its announcement that it plans to reconsider the rule. The documents will provide insight into how EPA is evaluating the Chemical Disaster Rule and the problem of chemical disasters. The American public is interested in understanding whether or not the EPA is fulfilling its mission under the Clean Air Act section 7412(r), and whether or not EPA intends to take action that will prevent fires, explosions, releases, and other chemical disasters, and what information EPA is considering to decide any such action to take.

Factor 5: The existence and magnitude of a commercial interest.

UCS is a non-profit, non-partisan, public interest organization chartered under IRS Code § 501(c)(3) as a non-profit, educational and charitable organization. We seek to serve the public by working for a healthy environment and a safer world. We do this by combining independent scientific research and citizen action to develop innovative, practical solutions and to secure responsible changes in government policy, corporate practices, and consumer choices.

UCS is actively involved in working with government agencies, elected officials, and the public toward solutions to ensure that the best possible science is available for policy-makers to use in crafting the policies that protect human health and the environment. One research aspect of this effort is focused on how freely and openly scientific information is communicated by federal agencies, like the EPA.

UCS provides its members and the public with information on science policy, primarily through its website, www.ucsusa.org, which is updated daily with the latest news and information, including actions involving and related to federal agencies, such as the EPA. UCS seeks the requested information for the purpose of disseminating it to its members and the general public, free of charge. UCS receives no corporate funding, nor does it receive funding from any entity with a financial stake in the outcome of any regulatory action that may be taken.

Factor 6: The primary interest in disclosure:

Because UCS has no commercial interest in the disclosure, the release cannot "primarily" be in UCS's commercial interest. The EPA outlines that a public interest "fee waiver or reduction is

³ See <http://www.ucsusa.org/our-work/center-science-and-democracy/promoting-scientific-integrity/interference-at-the-epa.html> for more information.

⁴ See <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg34913/html/CHRG-110hhrg34913.htm>.

⁵ See <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/23/AR2008042303074.html> and <http://thehill.com/policy/energy-environment/214983-journalists-tell-epa-to-stop-muzzling-science-advisers>

justified where the public interest standard is satisfied and the public interest is greater in magnitude than that of any identified commercial interest in disclosure.” As explained above under “Factor 5,” UCS has no commercial interest that would be furthered by the requested disclosure, while the public interest served by disclosure as described above is substantial. UCS thus meets this final criterion of a public interest fee waiver.

Request for Recognition as a Representative of the News Media

UCS qualifies for a fee waiver under the FOIA and EPA regulations. UCS is also entitled to recognition as a representative of the news media under 5 U.S.C. § 552(a)(4)(A)(ii). Thus, if the EPA denies the requested fee waiver, any fees associated with the processing of this request should be “limited to reasonable standard charges for document duplication.” *Id.* § 552(a)(4)(A)(ii)(II).

UCS does not seek the requested records for commercial purpose. It also regularly publishes reports and disseminates its reports and other materials via publications, its website, and newsletters. It also contributes to and maintains a blog, as well as an active Facebook and Twitter profile. As these facts demonstrate, UCS qualifies as a representative of the news media because it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Id.* § 552(a)(4)(A)(ii).

The Requesters’ Public Interest Status and History

The Union of Concerned Scientists is a non-profit, non-partisan, public interest organization chartered under IRS Code § 501(c)(3) as a non-profit, educational and charitable organization. We seek to serve the public by working for a healthy environment and a safer world. We do this by combining independent scientific research and citizen action to develop innovative, practical solutions and to secure responsible changes in government policy, corporate practices, and consumer choices.

UCS is actively involved in working with government agencies, elected officials and the public toward solutions to ensure that the best possible science is available for policy-makers to use in crafting the policies that protect human health and the environment. UCS engaged extensively in the development of the Chemical Disaster Rule by filing comments on the rule itself and on the Delay Rule. UCS has also produced several reports analyzing the harm to nearby communities from chemical accidents at covered facilities.⁶

Dissemination of the Requested Information

In our efforts to promote respect for federal scientists and the work they do, UCS works closely with Members of Congress, the media, and the public to alert them to any abuses of science in the federal policy-making process. The documents and other materials provided to UCS in

⁶ See, e.g., UCS, *Double Jeopardy in Houston: Acute and Chronic Chemical Exposures Pose Disproportionate Risks for Marginalized Communities* (2016), <https://www.ucsusa.org/center-science-and-democracy/connecting-scientists-and-communities/double-jeopardy>.

response to this FOIA request will be used in connection with work aimed at informing key decision-makers at the federal level, the general public, and self-selected subscribers.

The combined circulation and viewer-base of our national, regional, and self-subscribed outlets ensure that the information will, indeed, be widely distributed to diverse segments of the public who will benefit from the authorized disclosures concerning federal policy-making. As a consequence of this dissemination, public understanding of government operations will certainly be enhanced.

Non-commercial use of the Requested Information

Disclosure of this information by UCS is in no way connected with any commercial interest since UCS is a non-profit, tax-exempt organization under § 501(c)(3) of the IRS Code. The information we are seeking is crucial to advance public knowledge and will not be put to any commercial use.

Please be reminded that under the Freedom of Information Act, we are entitled to a response to this request within twenty working days. Should this request be denied for any reason, we ask that a detailed explanation be provided along with the name of the person to whom administrative appeals should be addressed.

If you have any questions regarding this request, please contact our attorneys at Earthjustice through Lisa Fuhrmann (lfuhrmann@earthjustice.org, 202.745.5215) by telephone or email.

* * *

Thank you in advance for your assistance and cooperation.

Sincerely,

Emily Berman
Union of Concerned Scientists
eberman@ucsusa.org
p: 202-331-5663
f: 202-223-6162

Gordon Sommers, Attorney
Emma Cheuse, Attorney
Lisa Fuhrmann, Litigation Assistant
Earthjustice
gsommers@earthjustice.org
echeuse@earthjustice.org
lfuhrmann@earthjustice.org
T: 202.667.4500
F: 202.667.2356
Counsel for Union of Concerned Scientists

